

Construction Contracting Guideline - 5.5.G (12/15/99)

[Last Update: \(12/15/99\) ABachicha:dal - 5.5.G.0](#)

[Acquisition Planning for Construction - 5.5.G.1](#)

[Davis-Bacon Act Requirements - 5.5.G.2](#)

[Solicitation Contents for Construction Contracts - 5.5.G.3](#)

[Awarding a Construction Contract - 5.5.G.4](#)

[Construction Contract Administration - 5.5.G.5](#)

[Construction Contract Changes - 5.5.G.6](#)

[Applicable Clauses - 5.5.G.7](#)

[References - 5.5.G.8](#)

[Policy - 5.5.P](#)

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This guideline has been reformatted for placement on Sandia's External Web site.

Definitions

Construction is the act of building, erecting, or fabricating a structure such that it will become real property. Construction includes alteration or repair (to include painting and decorating) of buildings, structures, or other real property. Buildings, structures, or other real property include, but are not limited to, improvements of all types, such as bridges, dams, highways, streets, tunnels, sewers, mains, power lines, pumping stations, railways, airport facilities, terminals, docks, piers, levees, canals and channels. Construction does not include manufacture, production, furnishing, alteration, repair, processing, or assembling of personal property.

The **Davis-Bacon Act**, 40 USC 276, provides that government contracts must set forth the minimum wages to be paid to all classes of laborers and mechanics to be employed in the contract work. The Davis-Bacon Act is applicable to every SNL construction contract over \$2,000.

Line Item Construction, for the purpose of this guideline, shall be considered to be the construction of the facility or building associated with a congressionally-approved line item construction project.

The **Miller Act**, 40 USC 270 b(a), requires a Government Contractor to post a surety bond for the protection of all persons supplying labor and material in the prosecution of the work under the contract if the contract is for more than \$25,000.

A **payment bond** provides protection of persons supplying labor and material under a construction contract. Payment bonds, usually furnished by a surety, guarantee to make payments for labor and material furnished in furtherance of the contract work (see Miller Act).

A **performance bond** provides a guarantee, usually furnished by a surety, to make SNL or the Government whole for any loss they may sustain as a result of a construction Contractor's failure to perform in accordance with the terms, conditions and agreements of the contract.

Personal property generally includes everything subject to ownership that is not real property. Personal property includes, but is not limited to, goods, chattels, money, and moveable trailers, equipment and facilities.

A **quotation bond** (bid bond) is a guarantee, usually furnished by a surety, that quotations will not be withdrawn within the time for acceptance and that, if successful, the Contractor will execute a written contract and furnish additional bonds as required by the contract.

Real property is land, and generally whatever is erected or affixed to the land.

Pre-Bid Conference - A conference held with prospective bidders prior to the submission of a bid for the purpose of: visiting the proposed construction site, clarifying any ambiguous situations, answering bidder questions, and to ensure that all bidders have a common basis of understanding regarding the bid.

Public Bid Opening - Wherein bids are opened in a public area and posted in a quote board. The date and location of the public openings should be shown in the solicitation or in a separate letter if a public opening is planned.

Public Plan Room Utilization - Public plan rooms are locations, within each specific geographic region, accessible to construction Contractors and Subcontractors. Plans submitted to the plan rooms are available to any person in the construction trade. If the SCR chooses to use a plan room, the location of the local plan rooms used should be specified in the solicitation or separate letter.

Acquisition Planning for Construction -

5.5.G.1

Acquisition Planning:

- must be completed prior to issuing the solicitation and is mandatory for: individual requirements over \$100,000, including the values of all options.
- is optional, but encouraged, for any acquisitions that are critical or time sensitive, regardless of dollar value, where the SCR and user believe this planning is necessary.

Note: Refer to Guideline 1.1 for additional information on Acquisition Planning.

Acquisition Planning is the single most important phase of the procurement process for large construction projects as the decisions made during the planning phase shape the entire direction and eventual outcome and success of the procurement. Following are some Acquisition Planning considerations, especially applicable to construction contracting, that should be addressed in the acquisition in addition to the considerations discussed in Guideline 1.1.

- What types of Contractors are required?
 - General, Mechanical, or Electrical Contractors
 - Specialty Contractor
- What funding is available for the project?
- Should progress payments be made?
- Should a quotation guarantee bond be required?
- Should the project be broken down into phases, milestones, options, or any combination of the above?
- What measures need to be taken to identify qualified quoters on each phase of the project?
- Should liquidated damage provisions be incorporated?
- Are there special security considerations?
 - Isolation of the construction area
 - Availability of guards/escorts
 - Security clearance requirements
- Are special construction equipment or utilities needed?

- Are there any special ES&H constructions?
- Who will be responsible for construction inspection?
- Is there a need for special quotation procedures?
 - Public Bid Openings
 - Use of Public Plan Rooms
 - Pre-Bid Conference

The SCR, with assistance from other members of the Facilities organization, is responsible for writing the acquisition plan and for updating the plan throughout the procurement process. Participants in the planning process should concur with the plan.

Davis-Bacon Act Requirements - 5.5.G.2

Obtaining DOE Determinations and Approvals - 5.5.G.2.a

Any Purchase Requisition (PR) for a procurement which may possibly involve Davis-Bacon Act coverage must be submitted to DOE/KAO by the SCR for a determination as to the applicability of the Act. At SNL/NM, a copy of the PR shall be forwarded to DOE/KAO for this purpose. SNL/CA may fax a copy of the PR to DOE/KAO. In those cases where it is determined that the Act does apply, DOE/KAO will notify SNL in writing of the Act's applicability.

Processing the Solicitation - 5.5.G.2.b

In order to expedite matters, the SCR will prepare the solicitation documents. In preparing the documents, the SCR will exercise best judgment concerning the applicability of the Davis-Bacon Act.

If, by the time the solicitation has been prepared a Davis-Bacon determination has not been returned by DOE/KAO, the SCR may issue the solicitation(s). If the official DOE/KAO determination differs from the SCR's determination, the SCR shall advise all Contractors, in writing, via solicitation amendment. It is important that all Contractors are given the opportunity to quote on the same basis, e.g., the Davis-Bacon Act either does or does not apply, even if it involves resubmitting solicitations.

PAS Requirements - 5.5.G.2.c

The PAS shall state that the provisions of the Davis-Bacon Act were considered and deemed

applicable or nonapplicable, and that DOE/KAO approval has been obtained if the Act applies.

Labor Standards Provisions - 5.5.G.2.d

Acceptable Labor Standards Provisions are covered in Section II Terms and Conditions. These provisions are self-incorporating.

Davis-Bacon Wage Decisions - 5.5.G.2.e

The Labor Standards Provisions require the Contractor to pay employees at rates no less than the rates specified in the wage decision of the Secretary of Labor for that geographical area.

Wage Decisions and Modifications thereto are published in the Federal Register per the Department of Labor. This information can be found in the construction buying organization.

For all work covered by the Davis-Bacon Act, the SCR shall incorporate and enclose a copy of the applicable wage decision with the solicitation and the resulting contract, identifying it by number. Since new or modified wage decisions may be issued at any time, care shall be taken that the latest decision is incorporated in a solicitation and the resulting contract. Modifications of General/Wage Decisions which are published in the Federal Register later than 10 days before the opening of bids are not effective, except when the SCR finds that there is a reasonable time in which to notify Contractors of the modification.

There are two types of wage decisions:

- General Building and Heavy Engineering construction and
- Streets, Highway, Utility and Light Engineering construction.

When including a wage decision in a given solicitation or contract, the SCR shall specify the type of construction work involved. For construction contracts, the Facilities Center is responsible for designating the type of wage decision which applies. It is the responsibility of the SCR to specify in the solicitation and resulting contract, which wage decision(s) applies. If the work is split, where both types are applicable, both wage decisions would be incorporated only if the smaller type of work is greater than 20% of the total job. Otherwise, if the portion of the smaller type of work is less than 20%, then only the wage decision for the larger type of work would apply.

Weekly Payrolls and Statements of Compliance - 5.5.G.2.f

The Labor Standards provisions require the Contractor to submit to the SCR each week a certified copy of all payrolls together with a weekly statement of compliance. The approved format for Contractor's Weekly Statement of Compliance is set forth in 29 CFR, Part 3.

Processing Payroll Compliance Statements - 5.5.G.2.g

Upon receipt of Contractor's weekly payroll copies, the SCR or her/his designee shall check the

wage rates shown therein against the applicable wage decision. If any class of laborer or mechanic is employed under the contract in a classification not appearing on the wage decision, the Contractor shall be requested to classify or reclassify such employee(s) conformably to the wage decision and the action taken, including any disagreement between SNL and the Contractor on this point, shall be reported to DOE/KAO.

Solicitation Contents for Construction Contracts 5.5.G.3

Selecting Prospective Contractors - 5.5.G.3.a

The SCR is responsible for securing adequate competition for SNL construction contracts. The SCR should work closely with the SNL Supplier Relations office to develop an adequate number of qualified sources as resources for SNL construction contracting needs.

The following guidelines are optional for securing adequate competition on all line item construction requirements, or those valued at \$1,200,000 and over. The solicitation lists for these procurements may be derived from the following sources:

- SNL Supplier Information and Relations furnished lists and referrals,
- prospective qualified Contractors identified at SNL Outreach Programs, and
- prospective qualified Contractors responding to notices in the Commerce Business Daily and/or appropriate trade journals.

Note: Advertising is optional, and may be used at the SCR's discretion, for all construction-related projects (e.g., landscaping, occupancy, line item construction).

Mandatory Contractor Qualifications - 5.5.G.3.b

If the SCR decides that prospective Contractors must have mandatory qualifications, the SCR should set forth in each construction solicitation, a list of the mandatory requirements. In the case of joint ventures, at least one of the parties must possess all of the mandatory requirements. The SCR should develop mandatory requirements that are tailored to each individual construction project, giving consideration to qualifications such as:

- has the Contractor demonstrated experience on a reasonable number of successfully completed projects of similar size and complexity,
- has the Contractor indicated adequate organizational and management skills,
- has the Contractor shown the necessary technical skills to successfully complete the

project, and/or ES&H skills and abilities,

- has the Contractor presented an adequate record or listing of successfully completed construction projects over the past three to five years without recourse to sureties,
- has the Contractor exhibited the necessary resources (personnel, equipment and financial) to complete the project when required by SNL, and
- other qualifying factors as determined by the SCR.

Site Inspection - 5.5.G.3.c

The SCR should encourage prospective Contractors to inspect the site and the surrounding site conditions. The SCR should emphasize that the Contractors will be held responsible for the performance of the SOW whether or not they have inspected the site per Site Investigation and Conditions Affecting the Work Clause.

Normally, only the SCR should be in contact with prospective Contractors during the quotation period; however, the SCR may approve Facilities Center (Plant Engineering at SNL/CA) personnel discussing, meeting or corresponding with prospective Contractors. However, the SCR must ensure that all prospective Contractors are treated equally and fairly. If such approval is given, the SCR should remind SNL personnel that representations concerning site conditions that are ascertainable by a site visit should not be made. Conditions known to SNL but not ascertainable by a site inspection should be described in the solicitation, or an incorporation to the solicitation, if the conditions would affect the contract work.

Caution: The SCR should not make any representations concerning site conditions that can affect the work.

Special Solicitation Procedures - 5.5.G.3.d

The SCR should fully describe in the solicitation any special procedures that will be used and the evaluation criteria should be clearly presented. Special procedures available to the SCR at the SCR's option include:

- Prequotation conferences,
- Public Quotation Openings, and
- Public plan room utilization.

Administration - 5.5.G.3.e

The SCR is responsible for the integrity of the solicitation process. While it is not possible to cover all situations during the solicitation phase in this guideline, the SCR should always allow adequate time for Contractor quotation and coordinate all responses to questions raised by individual Contractors during this process.

The SCR shall document in the PAS any exceptions to provisions in the solicitation that a

prospective Contractor has included in their offer. If the SCR has determined that a Contractor does not meet the mandatory requirements, the SCR shall discuss the evidence used as a basis for the finding in the PAS.

Awarding a Construction Contract - 5.5.G.4

The SCR shall select the successful Contractor in strict accordance with the award criteria contained in the solicitation. The SCR shall then complete the PAS or PAD. Contract documents are prepared using the Document Production System. See Policy and Guideline 10.4 for PAS approval levels.

Contract Execution and Follow-up - 5.5.G.4.a

The SCR shall submit the contract documents to the successful Contractor, together with instructions to the Contractor for the submission of payment and performance bonds. The SCR is responsible for verifying that the Contractor has returned all required contract documents and bonds within 10 working days from the date of mailing or delivery.

Contract Schedules - 5.5.G.4.b

The SCR may consider requiring written contract schedules appropriate to the size and complexity of the construction project. The type and format of the schedule required normally is determined by the Contract SNL Facilities Engineer (Plant Engineer at SNL/CA). The schedule required can range from a simple bar or Gantt chart for a small project to a Critical Path Method (CPM) Plan. Whatever type is used, the SCR should be able to determine the effect of a delay in any particular resource used in the contract work on the scheduled completion date. If required, provisions requiring the Contractor to submit the initial schedule together with periodic updates should be incorporated into the contract.

Quotation Guarantee Bond Default - 5.5.G.4.c

If the solicitation contained the requirement for a quotation guarantee bond and the SCR finds that the contract awardee refuses to execute the contract documents and submit the required payment and performance bonds, the SCR shall notify their cognizant Department Manager and send a letter, certified mail, return receipt requested, to the quotation bond surety. The letter should notify the surety that the contract awardee has refused to execute the contract documents and indicate that SNL intends to submit a claim for an amount equal to the difference between the cost to SNL of acquiring the work and the amount of the defaulted quotation (reprocurement costs). Copies of the letter to the surety shall be sent to the cognizant procurement Department Manager, SNL Legal, and the defaulting Contractor.

Construction Contract Administration - 5.5.G.5

The SCR is responsible for administering the contract to assure that the:

- construction project is finished on schedule, and
- contract work meets the contract specifications.

SCR must depend on the support of many individuals for assistance in fulfilling this responsibility, including Sandia Contract Administrators and Construction Observers. The contractual authority of any individual with the authority to direct contract work should be fully described as provided below to avoid misunderstandings about authorized contract changes.

Payment and Performance Bonds - 5.5.G.5.a

Payment and performance bonds are required on firm fixed-price construction contracts valued in excess of \$100,000. Section II SF 6432-CN, Terms and Conditions for Fixed-Price Construction Contracts, covers the bonding requirements and provides that both bonds must be submitted to the SCR within 10 working days of the effective date of the contract. The bonds must cover the period of contract performance plus the warranty period. The SCR should send the bonds to the SNL Treasury Department as soon as the bonds are received. The SCR may assume that the bonds are acceptable to the Treasury organization unless the SCR is notified to the contrary within two working days after receipt. The SCR should keep a copy of the bonds and record in the contract file the date the bonds are received and forwarded to the Treasury organization, where the original bonds are retained in their files.

Contractual Authority - 5.5.G.5.b

The SCR should clearly define the contract authority of each individual associated with the contract either in the contract itself or in a letter signed by both the SCR and the Contractor. The listing should include the name, title, telephone number, contract authority (or absence thereof) for the:

- SCR,
- SNL Construction Observer(s),
- SNL Delegated Representatives, and
- SNL Facilities Project Engineer (Plant Engineer at SNL/CA) or representatives of such organizations.

Payments to Contractors - 5.5.G.5.c

The Payment Clause in Section II, SF 6432-CN, Terms and Conditions for Fixed-Price Construction Contracts, provides that the Contractor shall be paid upon completion and acceptance of all contract work after SNL receives an invoice together with an executed Contractor's Release Under Contract, Form SF 6432-J. When the SCR incorporates optional SC 229-PC, Progress Payments - Construction, in the contract, the Contractor is paid interim amounts upon invoicing depending upon the portion of the contract work completed. Clause 229-PC provides for a 10 percent retainage that may be increased unilaterally by the SCR to 50 percent if the SCR considers that the contract work is not proceeding satisfactorily. Once the work is substantially complete, the SCR may reduce the retainage to an appropriate amount commensurate with the degree of completion.

Construction Contract Dispute Mediation - 5.5.G.5.d

Section II, Dispute Clause, provides the remedies that are available to the Contractor should a dispute on a contract claim arise between SNL and the Contractor. Normally, the SCR will negotiate and resolve most claims outside of the disputes process; however, when a claim is made on which there is a disagreement between the SCR and the Contractor that cannot be resolved in normal negotiations, the SCR may invoke nonbinding mediation when the SCR:

- receives the written claim,
- believes that negotiations are not leading to an agreement on a contract claim, or
- receives notice that the Contractor intends to pursue a judicial remedy.

Usually, there will be only one mediation per claim, and several claims can be combined for the purpose of mediation. The SCR shall direct all requests for mediation support to Legal.

Construction Contract Changes - 5.5.G.6

There are more contract changes inherent in construction contracts than any other type of contracting at SNL. The SCR should handle Contractor claims for adjustments in the contract price or schedule promptly and document the contract file to support the rationale for the change. Although changes are discussed in Policy and Guideline 4.1, a brief discussion is included here because of the importance of changes in construction contracting.

Information Management - 5.5.G.6.a

The SCR should consider setting up a procedure on larger construction contracts to assure that the SCR has up-to-date information on contract progress and problems. The SCR may consider:

- requiring the Contractor to send status reports periodically,

- requiring the Construction Observers to send a short report covering any unusual problems encountered during contract performance, and/or
- visiting the site periodically, unannounced, to observe first-hand the staffing, progress, and condition of the work site.

Cardinal Changes - 5.5.G.6.b

A cardinal change is generally a change under which the essential identity of the work contracted for is altered, or when the method or manner of anticipated performance is so drastically and unforeseeably changed that essentially a new agreement is created. Cardinal changes may **not** be directed under the Changes Clause of the contract.

Equitable Price and Schedule Changes - 5.5.G.6.c

The Changes Clause authorizes the SCR unilaterally to order changes in the contract work in the following areas:

- specifications, drawings and designs,
- method and manner of work performance,
- furnished equipment, material, services or site of work, and
- contract schedules.

The Changes Clause notifies the Contractor that they may make a claim for an equitable adjustment to the contract price or schedule after a change is made under this clause. The SCR must consider the merits of the claim; however, if the SCR determines that no change in either price and/or schedule is appropriate, the claim may be rejected. The change can result in an increase and/or a decrease in the contract price and an adjustment in the contract schedule if the change effects the Contractor's critical path.

Applicable Clauses - 5.5.G.7

This section identifies the required and recommended clauses at applicable thresholds.

Mandatory Clauses - 5.5.G.7.a

The following mandatory clauses are not included in Section II, SF 6432-CN, and must be included in each solicitation at the values indicated below.

| Solicitation Value | Condition | Clause |
|---------------------------|------------------|---------------|
|---------------------------|------------------|---------------|

| | | |
|-------------|--|---|
| Over \$1.2M | Line Item Construction. optional on others, subject to SCR discretion. | SC 263-QB - Quotation Guarantee Bond |
| Over \$1.2M | Line Item Construction. optional on others, subject to SCR discretion. | SC 264-CE - Contractor-Owned Equipment |

Optional Clauses - 5.5.G.7.b

The SCR should consider the inclusion of optional clauses where it is appropriate. Examples include:

- SC 229-PC - Progress Payments - Construction
 - SC 230-PB - Price Breakdown
 - SC 404-KDB - Delegation of Authority (amended for construction)
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References - 5.5.G.8

- Policy and Guideline 1.1 - Acquisition Planning
 - Policy and Guideline 1.4 - Contract Types
 - Policy and Guideline 2.1 - Solicitation Document
 - Policy and Guideline 2.6 - Socio-Economic Procurement
 - Policy and Guideline 3.1 - Contractor Selection and Award Procedure
 - Policy and Guideline 4.1 - Contract Changes
 - Policy and Guideline 10.4 - Procurement Action Summaries
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Send feedback on ideas and information on this page to the Process Expert, Adolph Bachicha.

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